

AMENDED IN ASSEMBLY JUNE 22, 2010

AMENDED IN SENATE MAY 11, 2010

AMENDED IN SENATE APRIL 27, 2010

AMENDED IN SENATE APRIL 12, 2010

**SENATE BILL**

**No. 1172**

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**Introduced by Senator Negrete McLeod**

February 18, 2010

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An act to amend Section 156.1 of, and to add Sections ~~315.2, 315.4, and 315.6~~ 315.2 and 315.4 to, the Business and Professions Code, relating to regulatory boards.

LEGISLATIVE COUNSEL'S DIGEST

SB 1172, as amended, Negrete McLeod. Regulatory boards: diversion programs.

(1) Existing law provides for the regulation of specified professions and vocations by various boards, as defined, within the Department of Consumer Affairs. Under existing law, individuals or entities contracting with the department or any board within the department for the provision of services relating to the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs are required to retain all records and documents pertaining to those services for 3 years or until they are audited, whichever occurs first. Under existing law, those records and documents are required to be kept confidential and are not subject to discovery or subpoena.

This bill would specify that those records and documents shall be kept for 3 years and kept confidential and are not subject to discovery or subpoena unless otherwise expressly provided by law.

(2) Existing law provides for the licensure and regulation of various healing arts by boards within the Department of Consumer Affairs. Under existing law, these boards are authorized to issue, deny, suspend, and revoke licenses based on various grounds and to take disciplinary action against their licensees.

Existing law establishes diversion and recovery programs to identify and rehabilitate dentists, osteopathic physicians and surgeons, physical therapists, physical therapy assistants, registered nurses, physician assistants, pharmacists and intern pharmacists, veterinarians, and registered veterinary technicians whose competency may be impaired due to, among other things, alcohol and drug abuse.

The bill would require a healing arts board to order a licensee to cease practice if the licensee tests positive for any prohibited substance under the terms of the licensee's probation or diversion program. The bill would also authorize a board to adopt regulations authorizing it to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation, as specified. ~~Except as provided, the bill would prohibit a healing arts board from disclosing to the public that a licensee is participating in a board diversion program.~~ *The bill would provide that these provisions do not affect the Board of Registered Nursing.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 156.1 of the Business and Professions  
2     Code is amended to read:  
3     156.1. (a) Notwithstanding any other provision of law,  
4     individuals or entities contracting with the department or any board  
5     within the department for the provision of services relating to the  
6     treatment and rehabilitation of licentiates impaired by alcohol or  
7     dangerous drugs shall retain all records and documents pertaining  
8     to those services until such time as these records and documents  
9     have been reviewed for audit by the department. These records  
10    and documents shall be retained for three years from the date of  
11    the last treatment or service rendered to that licentiate, after which  
12    time the records and documents may be purged and destroyed by  
13    the contract vendor. This provision shall supersede any other

1 provision of law relating to the purging or destruction of records  
2 pertaining to those treatment and rehabilitation programs.

3 (b) Unless otherwise expressly provided by statute or regulation,  
4 all records and documents pertaining to services for the treatment  
5 and rehabilitation of licentiates impaired by alcohol or dangerous  
6 drugs provided by any contract vendor to the department or to any  
7 board within the department shall be kept confidential and are not  
8 subject to discovery or subpoena.

9 (c) With respect to all other contracts for services with the  
10 department or any board within the department other than those  
11 set forth in subdivision (a), the director or chief deputy director  
12 may request an examination and audit by the department's internal  
13 auditor of all performance under the contract. For this purpose, all  
14 documents and records of the contract vendor in connection with  
15 such performance shall be retained by such vendor for a period of  
16 three years after final payment under the contract. Nothing in this  
17 section shall affect the authority of the State Auditor to conduct  
18 any examination or audit under the terms of Section 8546.7 of the  
19 Government Code.

20 SEC. 2. Section 315.2 is added to the Business and Professions  
21 Code, to read:

22 315.2. (a) A board, as described in Section 315, shall order a  
23 licensee of the board to cease practice if the licensee tests positive  
24 for any substance that is prohibited under the terms of the licensee's  
25 probation or diversion program.

26 (b) An order to cease practice under this section shall not be  
27 governed by the provisions of Chapter 5 (commencing with Section  
28 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

29 (c) A cease practice order under this section shall not constitute  
30 disciplinary action.

31 (d) *This section shall have no effect on the Board of Registered*  
32 *Nursing pursuant to Article 3.1 (commencing with Section 2770)*  
33 *of Chapter 6 of Division 2.*

34 SEC. 3. Section 315.4 is added to the Business and Professions  
35 Code, to read:

36 315.4. (a) A board, as described in Section 315, may adopt  
37 regulations authorizing the board to order a licensee on probation  
38 or in a diversion program to cease practice for major violations  
39 and when the board orders a licensee to undergo a clinical

1 diagnostic evaluation pursuant to the uniform and specific standards  
2 adopted and authorized under Section 315.

3 (b) An order to cease practice under this section shall not be  
4 governed by the provisions of Chapter 5 (commencing with Section  
5 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

6 (c) A cease practice order under this section shall not constitute  
7 disciplinary action.

8 ~~SEC. 4. Section 315.6 is added to the Business and Professions~~  
9 ~~Code, to read:~~

10 ~~315.6. Unless otherwise authorized by statute or regulation, a~~  
11 ~~board, as described in Section 315, shall not disclose to the public~~  
12 ~~that a licensee is participating in a board diversion program unless~~  
13 ~~participation was ordered as a term of probation. However, a board~~  
14 ~~shall disclose to the public any restrictions that are placed on a~~  
15 ~~licensee's practice as a result of the licensee's participation in a~~  
16 ~~board diversion program provided that the disclosure does not~~  
17 ~~contain information linking the restriction to the licensee's~~  
18 ~~participation in the board's diversion program.~~

19 *(d) This section shall have no effect on the Board of Registered*  
20 *Nursing pursuant to Article 3.1 (commencing with Section 2770)*  
21 *of Chapter 6 of Division 2.*